

EXHIBIT 2

In The Matter Of:

MICROSOFT CORPORATION

v.

MOTOROLA INC., et al.

RICHARD HOLLEMAN - Vol. 1

June 19, 2013

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MERRILL CORPORATION

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RICHARD HOLLEMAN - 6/19/2013

Page 175

1 his opinions, but you can answer. 12:28:35

2 A Once again, the SDO would not 12:28:41

3 attempt to take a position on that, it'd be 12:28:43

4 considered outside the scope of the policy. 12:28:48

5 Q Okay. A number of times in your 12:28:50

6 reports you mentioned that Judge Robart has 12:28:56

7 found that Motorola's opening offer need not 12:29:00

8 be RAND. Do you recall that? 12:29:07

9 A Yes, I do. 12:29:11

10 Q Okay. In that same passage on the 12:29:12

11 same page of the Opinion where he mentions 12:29:16

12 that, he goes on to say that, "Nonetheless, 12:29:20

13 that does not mean that Motorola may make, 12:29:27

14 'blatantly unreasonable' offers to 12:29:34

15 implementers." 12:29:36

16 Do you recall that passage? 12:29:41

17 A Yes. 12:29:42

18 Q And you agree that a 12:29:45

19 standard-essential patentholder cannot make 12:29:46

20 blatantly unreasonable offers? 12:29:49

21 A I do not have an opinion in that 12:29:50

22 regard. 12:29:52

23 The Judge gave his opinion in that 12:29:53

24 regard. That's beyond the scope of what I 12:29:54

25 would opine about, it's beyond the scope of 12:29:55

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RICHARD HOLLEMAN - 6/19/2013

Page 176

1 the SDO's patent policy. 12:30:00

2 Q Okay. So you also don't have an 12:30:03

3 opinion as to whether the, within the context 12:30:04

4 of the SDO IPR policies, the 12:30:11

5 standard-essential patentholder can make an 12:30:13

6 opening offer that's not RAND? 12:30:16

7 MR. CUSHING: I'm going to object, I 12:30:20

8 believe that mischaracterizes his prior 12:30:21

9 testimony. You can answer. 12:30:23

10 A My testimony is that the whole idea 12:30:25

11 of initial offers are really not what's 12:30:31

12 driving or motivating the RAND commitment. 12:30:35

13 And from the SDO's perspective, it's the RAND 12:30:38

14 license itself that results from the 12:30:44

15 negotiations that is a significant aspect, 12:30:47

16 because it's that RAND license that allows 12:30:50

17 implementation of the standard, which is the 12:30:53

18 objective of the SDO. 12:30:57

19 So I would -- 12:30:59

20 Q Okay. 12:31:00

21 A -- agree, and I would say that the 12:31:01

22 SDOs are not concerned about initial offers, 12:31:04

23 they're concerned about hopeful outcome of a 12:31:09

24 RAND license. 12:31:12

25 Q Let me parse that out a little bit. 12:31:16

1	As we've discussed a number of	12:31:21
2	times, SDOs are not concerned with whether	12:31:24
3	there's negotiation at all, right, their	12:31:26
4	policies are simply silent as to whether there	12:31:30
5	has to be or does not have to be negotiation?	12:31:34

6	A That's true. But as I testified	12:31:38
7	earlier, I think there is an underlying	12:31:40
8	assumption that there would be negotiation --	12:31:44

9	Q	Okay.	12:31:47
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10	A -- and we've gone over this in the	12:31:48
11	ITU context, it even mentions negotiation. In	12:31:50
12	the IEEE offer to license, okay, there's, I	12:31:55
13	would say, an expectation that if someone is	12:31:59
14	interested in license there has to be some	12:32:01
15	negotiation.	12:32:03

16	So, I wouldn't say that the SDO is	12:32:06
17	not, is not, doesn't take a position on	12:32:07
18	whether or not there's negotiation. I would	12:32:14
19	say that it's -- you can look at the ITU, the	12:32:17
20	policy, and see that if there are	12:32:23
21	negotiations, they're outside of the ITU. If	12:32:25
22	there are negotiations in the IEEE, they would	12:32:29
23	be outside of the IEEE. There's no position	12:32:34
24	on whether or not there would be negotiations.	12:32:38
25	So I would say it's a matter of there are	12:32:41

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RICHARD HOLLEMAN - 6/19/2013

Page 178

1 negotiations. 12:32:44

2 Q Okay. 12:32:44

3 A But they are contemplated, I would 12:32:45

4 say because -- 12:32:46

5 Q Because that's -- and the basis for 12:32:48

6 your conclusion that they are -- are they 12:32:51

7 necessarily contemplated or are you saying 12:32:53

8 that -- 12:32:55

9 A I would say -- 12:32:55

10 MR. CUSHING: Wait, let him finish. 12:32:56

11 Q Yes, let me -- I don't want to run 12:32:57

12 around this tree again. I just want to make 12:32:59

13 sure I understand what your opinion is. 12:33:01

14 And, you know, I understand that 12:33:05

15 what you just said I thought is where we had 12:33:07

16 been -- 12:33:09

17 A Right. 12:33:10

18 Q -- which is if there are 12:33:10

19 negotiations under either IEEE or ITU IPR 12:33:11

20 policies, they're conducted outside the 12:33:16

21 organization, but that's if they are 12:33:19

22 negotiations. And -- 12:33:22

23 MR. CUSHING: Is that true, is his 12:33:25

24 question? Right? 12:33:26

25 Q Are you -- so far we're in 12:33:27

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RICHARD HOLLEMAN - 6/19/2013

Page 179

1	agreement, right?	12:33:29
2	A That it's outside, yes.	12:33:30
3	Q But only if there are negotiations?	12:33:31
4	A If there are negotiation -- not	12:33:33
5	only -- if there are negotiations, they're	12:33:36
6	outside of --	12:33:38
7	Q They must be outside, in fact?	12:33:38
8	A They are outside, yes.	12:33:40
9	Q They have to be outside?	12:33:41
10	A Okay.	12:33:42
11	MR. CUSHING: Objection, asked and	12:33:42
12	answered.	12:33:44
13	A Okay.	12:33:44
14	Q Other than the ITU and the IEEE's	12:33:46
15	requirement that negotiations, if they happen,	12:33:56
16	be conducted outside of the organization, do	12:33:56
17	you have any other basis for opining that	12:34:02
18	there must be negotiations?	12:34:06
19	MR. CUSHING: I'm going to object to	12:34:10
20	the form of the question to the extent it	12:34:11
21	mischaracterizes his testimony. You can	12:34:13
22	answer again.	12:34:15
23	A There's no language in either of	12:34:31
24	those policies that specifies the methodology	12:34:33
25	that would use, that would be used in terms of	12:34:40

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RICHARD HOLLEMAN - 6/19/2013

Page 180

1	offering a license or a license being	12:34:45
2	obtained, okay.	12:34:50
3	Q Okay.	12:34:51
4	A So --	12:34:51
5	Q I understand, okay.	12:34:52
6	A -- it's sort of an open field.	12:34:53
7	Q Okay. I'll come back to where I	12:34:55
8	started with all this then.	12:34:59
9	Do you intend -- what I want to know	12:35:00
10	is, you refer to the Judge's statement that an	12:35:08
11	opening offer need not be RAND --	12:35:13
12	A Right.	12:35:15
13	Q -- a number of times.	12:35:16
14	Do you intend to offer an opinion	12:35:20
15	that the opening offer need not be RAND, or	12:35:22
16	are you simply repeating what the Judge has	12:35:27
17	said?	12:35:30
18	A Well, I know I have given testimony	12:35:31
19	before on this very matter that, from an SDO	12:35:35
20	perspective, there is nothing that would lead	12:35:42
21	one to conclude that an offering, initial	12:35:47
22	offer has to be RAND. And in fact, in	12:35:52
23	practice the important -- and I'm repeating --	12:35:59
24	consideration is that the parties end up with	12:36:03
25	a RAND license.	12:36:07

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RICHARD HOLLEMAN - 6/19/2013

Page 182

1	unreasonable?	12:37:20
2	MR. CUSHING: Objection, asked and	12:37:21
3	answered. You can answer.	12:37:22
4	Q Whatever that may mean?	12:37:23
5	A Yeah, I do not have an opinion on	12:37:24
6	what blatant would be or not be. And again,	12:37:26
7	from the SDO perspective, that's not a	12:37:33
8	concern.	12:37:35
9	Q Okay. But you do believe that ITU	12:37:35
10	and the IEEE IPR policies are concerned with	12:37:39
11	providing a reasonable return on investment to	12:37:42
12	standards setting participants?	12:37:46
13	MR. CUSHING: Object to the form.	12:37:50
14	You can answer.	12:37:51
15	A Yes, that's the concept of	12:37:55
16	reasonableness embodied in the policies.	12:37:56
17	Reasonableness from the point of	12:38:01
18	view of the patentholder, reasonableness from	12:38:02
19	the point of view of potential licensees. And	12:38:05
20	the interests in striking a balance that	12:38:11
21	protects the interests of the patentholder and	12:38:16
22	the interests of the implementer.	12:38:19
23	Q And you agree, though, that neither	12:38:22
24	the ITU nor the IEEE IPR policies make any	12:38:23
25	mention of return on investment for the	12:38:28